TAM GAYOK

v.

W.T.K. PUASA O.K. DOLLAH

HIGH COURT BORNEO, MIRI
GEORGE SEAH J
[CIVIL APPEAL NO. K. 3 OF 1979]
30 JULY 1982

LAND LAW: *Disputed claim of ownership over land in Miri, Sarawak - Settlement order under s. 95, Land Code, Sarawak - Publication in Gazette - Appeal against order - Jurisdiction of Magistrate - Whether appeal within time - Section 102(1) - Effect of appeal out of time.*

The appellant and respondent both lodged conflicting claims against a piece of land in Miri, Sarawak. The Settlement Officer, pursuant to s. 94(1) of the Land Code, Sarawak (Cap. 81), awarded the lot in dispute to the appellant and made a settlement order pursuant to s. 95 and had it published in the *Gazette* on 18 December 1975. The respondent appealed under s. 102(1) on 1 July 1977. The Magistrate allowed the appeal. The appellant appealed.

Held:

[1] The appeal to the Magistrate was clearly out of time. Time limited for appeal was from the date of the publication in the *Gazette* of the settlement order and not from the date a copy of it was served on the respondent.

[2] The Magistrate therefore had no jurisdiction and the whole proceedings before him were a nullity. Where an appeal is out of time, the question that arises is one of jurisdiction and not merely of miscarriage in the course of an inquiry, and where there is no general jurisdiction, no consent or acquiescence can confer it. (*Essex County Council v. Essex Incorporated Congregational Church Union* [1963] AC 808)

[Appeal allowed.]

Case referred to:
Essex County Council v. Essex Incorporated Congregational Church Union [1963] AC 808

Legislation referred to:
Land Code (Cap 81) (Sarawak), ss. 84, 91(2), 94(1), 95, 102(1), 103

For the appellant - Peter Lin; M/s. K.Y. Lin & Co.
For the respondent - M.S. Sandhu; M/s. M.S. Sandhu & Co.

JUDGMENT

George Seah J:

This is an appeal against a decision of the Magistrate of the First Class dated 29 August 1979 whereby he reversed the order of the Settlement Officer, Land & Survey Department, Miri, Sarawak in awarding a piece of land described as Lot 12 Block 1 Sibuti Land District (hereinafter referred to as Lot 12) to Tam anak Gayok, the appellant in this appeal but a respondent in the Court below.

The brief facts insofar as they are relevant to this appeal are these:

(a) Whenever it appears to the Director of Land & Survey Department, Sarawak that rights of ownership have been acquired by natives by the exercise of their customary rights or whenever for any other reason he is of the opinion that it is expedient to effect a

settlement of rights, he may publish in the *Gazette* a Settlement Notification (see s. 84). After this publication the Settlement Officer shall take the necessary steps laid down in the Land Code (Cap. 81), and all claimants to State land shall produce all documentary evidence held by them to support their claims. Section 94(1) provides that

> "The Settlement Officer shall investigate publicly all claims to State land, whether based upon documentary evidence, native customary tenure or otherwise, and shall have power to determine in whose favour the rights to such land shall be shown in the Settlement Order made under s. 95 or may, in the case of conflicting claims, permit the parties to refer the determination of the same to arbitration under the Arbitration Ordinance".

(b) It is common ground that both the appellant, Tam ak. Gayok and the respondent, W.T.K. Puasa bin O.K. Dollah lodged a claim against the disputed land. However, the Settlement Officer awarded Lot 12 to the appellant, Tam ak. Gayok and made a Settlement Order pursuant to s. 95 thereof. This Order was published in the *Gazette* on 18 December 1975 *vide* Notification No. 3822 at p. 2896 of Part V.

(c) The respondent, W.T.K. Puasa bin O.K. Dollah was dissatisfied with the determination of the Settlement Officer and appealed to the Court of a Magistrate of the First Class under s. 102(1) on 1 July 1977. The Magistrate of the First Class allowed the appeal and gave his judgment on 29 August 1979. Tam ak. Gayok was aggrieved by this decision and has now lodged an appeal to the High Court.

Before dealing with the merits of the appeal I like to refer to the right to appeal from a decision of the Settlement Officer which is contained in s. 102(1) of the Land Code (Cap. 81) which *inter alia*, reads:

> 102(1) Any person aggrieved by any act or decision of the Settlement Officer ... may ... appeal to the Court of a Magistrate of the First Class by a petition in writing made within one (since 1979 3-month) month from the date of the publication in the *Gazette* of the Settlement Order or, in the case of a decision arising out of a claim investigated by the Settlement Officer in accordance with the provisions of subsection (2) of s. 91, within one (since 1979 3-month) month from the date on which a copy of such decision was served on the person so aggrieved, and, for the purpose of any further appeal, any such decision made by a Settlement Officer ... shall be deemed to have been made in civil proceedings.

Since the memorandum of appeal dated 1 July 1977 and filed in the Court of a Magistrate of the First Class referred to a decision of the Settlement Officer affecting Lot 12 which Settlement Order appeared in the *Gazette* on 18 December 1975 *vide* Notification No. 3822, it seems to me that the decision of the Settlement Officer was subject to the first limb of s. 102(1) and that under this limb the time limited for appeal to the Court of a Magistrate of the First Class in 1975 was within one month from the date of the publication of the *Gazette*, *viz*. 18 December 1975. In my opinion, the second limb of s. 102(1) relating to a decision of the Settlement Officer under s. 91(2) is clearly not applicable. As the petition of appeal was only filed on 1 July 1977 it was plainly delivered out of time. I have examined the record of proceedings in the Court below and I find there was no application for enlargement of time to file the memorandum of appeal dated 1 July 1977. In this respect, s. 103 provides that "After the expiration of the period prescribed, no appeal shall lie from any decision recorded in the Settlement Order ..." Since the memorandum of appeal dated 1 July 1977 was delivered very much outside the period limited for appeal and since there was no application for extension of time to file the petition of appeal, it follows that applying the provision of s. 103 of the Land Code (Cap. 81) the Court of the Magistrate of the First Class had no

jurisdiction to entertain this appeal. In short, the appeal was not properly before the Court of a Magistrate of the First Class and that the whole proceedings were a nullity. Without going into the merit of the appeal I have no alternative but to set aside the proceedings in the Court of a Magistrate of the First Class and allow the appeal. In *Essex County Council v. Essex Incorporated Congregational Church Union* [1963] AC 808 Lord Reid said:

> I need not consider whether this amounted to a consent to widening the reference to the tribunal, because, in my judgment, it is a fundamental principle that no consent can confer on a Court or tribunal with limited statutory jurisdiction any power to act beyond that jurisdiction, or can estop the consenting party from subsequently maintaining that such Court or tribunal has acted without jurisdiction.

At p. 834 Lord Delvin in dealing with the same question said:

> Before answering the question it is convenient to consider what it is that a superior Court has to be satisfied about when it is questioning the jurisdiction of an inferior tribunal. It has to be satisfied that the tribunal has general jurisdiction, that is, jurisdiction to enter upon the inquiry. A statute, besides laying down conditions precedent to the entry upon the inquiry, often lays down conditions which have to be satisfied before the tribunal takes some step in the course of the inquiry or makes interim or final orders. If these conditions are not satisfied, it is then sometimes said that the tribunal had no power to take the step or make the order. That is not what is meant by general jurisdiction. If the tribunal makes an order it ought not to have made, it may thereby fall into an error of law which can be corrected, but the error does not deprive it of jurisdiction. This distinction is made clear in the opinion of the Judicial Committee in the well-known case of *Colonial Bank of Australasia v. Willian* [1874]" L.R. 5 P.C. 417 where it is said: "... the question is, whether the inferior Court had jurisdiction to enter upon the inquiry, and not whether there has been miscarriage in the course of the inquiry." Lord Sumner spoke to the same effect in *Rex. v. Nat Bell Liquors Ltd.* [1922] 2 AC 128 at p. 151. The case of *Andrews v. Elliot* [1855] 5 E & B 502 which was cited in argument, is an illustration of the same point. It illustrates also the rule that if there is no general jurisdiction, no consent or acquiescence can confer it. But if there is general jurisdiction, consent or lack of objection such as is alleged here might prevent the respondents from relying upon any irregularity in the proceedings.

Before departing from this case I would like to make a general observation. When an appeal is brought against the decision of a Settlement Officer under s. 102 (1) of the Land Code (Cap. 81) the procedure to be adopted at the hearing of the appeal is for the appellant to show that the decision of the Settlement Officer was wrong and the onus is on him to do so. This is because the Settlement Officer shall be deemed to have publicly investigated all claims and examined all documents produced in support as well as to have listened and recorded all the oral testimonies of the witnesses. The Settlement Officer must always remember that he must act in good faith and giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their case. I do not mean the Settlement Officer should treat such a proceeding as though it were a trial.

Also found at [1983] 1 CLJ 102